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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,555	09/17/2001	Paul J. Thompson	11576.55US11	9046
21127	7590	07/13/2005	EXAMINER	
KUDIRKA & JOBSE, LLP			STEWART, ALVIN J	
ONE STATE STREET			ART UNIT	
SUITE 800			PAPER NUMBER	
BOSTON, MA 02109			3738	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/954,555	<b>Applicant(s)</b> THOMPSON ET AL.	
	<b>Examiner</b> Alvin J. Stewart	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-34,36-39,45-51 and 53-68 is/are pending in the application.
- 4a) Of the above claim(s) 7-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-34,36-39,45-51 and 53-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5, 6, 12-15, 18-21, 23, 26-29, 31, 34, 36, 38, 45-51, 53-68 are rejected under 35 U.S.C. 102(e) as being anticipated by Stallings et al US Patent 6,776,791 B1.

Stallings et al discloses a catheter having an elongated member, a stent, a sheath, a male interlock, a female interlock, a cell defined region (see Fig. 12), the stent ends after element 35 (see Fig. 5), the diameter of the stent is about 20mm, therefore, at least a portion of each first and second interlock structures being positioned a distance at most 5 mm from the cell defining region.

Regarding claim 18, the elongated member can be interpreted as element structure 50.

The Examiner interpreted element structure 37 as the rounded enlargements. Structure 37 has curved region, therefore, the Examiner interpreted the curved region as the rounded enlargements.

Claims 1, 2, 5, 6, 12-15, 18, 36, 38, 45, 46, 62 and 66 are rejected under 35 U.S.C. 102(e) as being anticipated by Robinson et al US Patent 6,077,297.

Robinson et al discloses a catheter having an elongated member (66), a stent (10), a sheath (60), a male interlock (81), a female interlock (opening between graft 20 and end of

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stent), a cell defined region (graft 20), at least a portion of each first and second interlock structures being positioned a distance at most 5 mm from the cell defining region.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 22 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stallings et al US Patent 6,776,791 B1.

Stallings et al discloses the invention substantially as claimed. However, Stallings does not disclose a radiopaque marker positioned adjacent to the implant mounting region.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the Stallings et al reference by having a plurality of markers positioned adjacent to the implant mounting location in order to determine the exact location of the implant within the body lumen because Applicant has not disclosed that the radiopaque marker provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the delivery system of the Stallings et al reference because the surgeon would still be capable of seeing the catheter and stent under fluoroscopy.

Therefore, it would have been an obvious matter of design choice to modify the Stallings et al reference to obtain the invention as specified in claims 4, 22 and 30.

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Claims 16, 17, 24, 25, 32, 33, 37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stallings et al US Patent 6,776,791 B1.

Stallings et al disclose the invention substantially as claimed. However, Stallings does not disclose a portion having a distance at most 1 millimeter from the cell defining region of the implant.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the length of the interlock structures at most 1 mm because Applicant has not disclosed that by having a distance at most 1mm provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the above 5mm distance because it will perform equally the same as having 5mm.

Therefore, it would have been an obvious matter of design choice to modify the Stallings et al reference to obtain the invention as specified in claims 16, 17, 24, 25, 32, 33, 37 and 39.

### ***Response to Arguments***

Applicant's arguments filed April 20, 2005 have been fully considered but they are not persuasive.

The Stallings et al reference and the Robinson et al references still read on the rejected claims. As disclosed by US Patent '791 the stents are capable of having a diameter lower than 20 mm in the expanded position, therefore, the interlocks structures are capable of having a distance being at most 5 millimeters from the cell defining region. The phrase "at least a portion of the first interlock structure" in independent claims 1, 36 and 38 make the claims broad. The Applicant should disclose at least two enlargements positioned at the terminal end of the stent

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and the enlargements being located a distance from the cell defining region of the implant, the distance being at most 5 millimeters from the cell defining region.

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J Stewart whose telephone number is 703-305-0277. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

  
**ALVIN J. STEWART**  
**PRIMARY EXAMINER**  
Alvin J Stewart  
Primary Examiner  
Art Unit 3738

July 6, 2005.